

Supreme Court, U. S.

FILED

FEB 1 1977

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No 76-1055

STANLEY V. TUCKER,

Petitioner

-v-

PEOPLES SAVINGS BANK - BRIDGEPORT

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

STANLEY V. TUCKER
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IN THE
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October Term, 1976

No _____

STANLEY V. TUCKER,

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-v-

PEOPLES SAVINGS BANK - BRIDGEPORT

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

Petitioner prays that a writ of certiorari
issue to review the judgment of the Conn.
Supreme Court made November 3rd, 1976 and
entered 11-8-76.

CITATIONS TO OPINIONS BELOW

The opinion of the Connecticut Supreme Ct
is printed in the Appendix, infra A-1, and

-2-

and the Motion for Appointment of Receiver
of Rents dated March 9th, 1976 is printed
in Appendix A-2. The Findings of the Court
dated November 2, 1976 as to the Receiver
of Rents is printed in A-3. The Plea in
Abatement dated March 8th, 1976 and the
Amendment of April 12, 1976 with the order
of May 6th, 1976 are printed in A-4. The
statute complained of as unconstitutional
namely, G. S. 52-504, is printed in the
Appendix, A-5.

JURISDICTION

The judgment of the Connecticut Supreme
Court was made November 3, 1976 and entered
November 8, 1976. The jurisdiction of
this Court is invoked under Title 28 USC
1257 (3).

COMPANION CASE

An identical petition for certiorari is filed on or about the same date as this instant petition. The issues in the companion action, Tucker v Hartford National Bank & Trust Co, No _____, are identical as a Rent Receiver was appointed under the same statute complained of and while in that action the plea in abatement was granted but in this action the same plea in abatement was overruled, compare Appendix A-4 herein with A-4 of the companion action. However, after the action below was abated a motion to amend the return was granted.

Granting of this petition should lead to an automatic granting of the companion petition and the reverse is also true.

QUESTIONS PRESENTED

1. Where Petitioner claims he had been deprived under color of state law, of property without procedural due process or equal protection of the laws is a substantial federal question raised?
2. Where billions of dollars of real property is being foreclosed in Connecticut yearly without procedural due process should not this Court Grant Certiorari to review the deprivation of fundamental federally guaranteed rights?
3. Where the appointment of "rent receivers" is being carried out on motion without grounds being set out in the motion or at hearing and without supervision of the rent receiver by a state officer is this not an "independent proceeding" warranting review on appeal?

4. Does Connecticut's Receivership statute GS 52-504 violate the minimum requirements set out by this Court in its decision in Fuentes v Shevlin 407 US 67.

5. Does the lack of any standards in GS 52-504 permits its wanton use for carrying out fraudulent seizures without due process of Billions of dollars of real estate in Connecticut by "fat cat" predatory banks.

6. Is a pre-judgment appointment of rent receiver appealable under GS 52-278 1.

CONSTITUTIONAL & STATUTORY PROVISIONS

1. This case involves a denial of procedural due process and equal protection of the laws, the fifth and fourteenth amendments to the U. S. Constitution.

2. This case involves Conn G. S. 52-504 challenged as void and unconstitutional and set out in Appendix A-5.

3. This case involves the jurisdictional statute GS 52-278 1 defining as an "appeable order" any order granting a Pre-Judgment Remedy.

STATEMENT OF THE CASE

Factual Background: In this action the Petitioner was paid in full on mortgage and insurance while taxes were paid due to appeals with statutory overpayments. However, in the face of objections from the Petitioner the Peoples Savings Bank on Oct 1976 entered into a rent collection scheme that was so poorly administered and caused such large losses in cash flow that now the Peoples Savings Bank went into the Hartford Superior Court and on strength of losses it created obtained an order for a Rent Receiver. The Rent Receiver who was a law associate of attorney for Peoples Savings Bank - if not his informal partners - as they both

inspected together and destroyed all cash flow to the extent that over \$24,000 in rent losses materialized and almost 100% of the tenants vacated the premises leaving vandals and/ or narcotics addicts to enter and vandalize and destroy the interior to the extent that over \$100,000 in loss of market value took place.

With the market value destroyed the Bank now appeared in court claiming the property valueless and requesting "strict" foreclosure to seize the entire equity without payment of one penny.

Statute Challenged as Unconstitutional

This action challenges the constitutionality of Conn G. S. 52-504 permitting the seizure of private property without procedural due process and without the constitutional safeguards mandated by recent civil rights decisions .

Pursuant to the Statute complained of:

1. Plaintiff seized under color of state law private property of Defendant without any justification in law or equity.
2. Plaintiff proceeded by bad faith mismanagement to cause losses of over \$24,000 in rental income over a one year period.
3. Plaintiff, classed as a predatory "fat cat" bank then used the bad faith losses it created to claim a "default" on the mortgage.
4. Without a "probable cause" hearing and without any grounds given in violation of Conn Pre-Judgment Remedy Act, GS 52-278 a-b c-d-e-f-g Plaintiff applied for and received an order for a rent receiver.
5. At the time Plaintiff commenced the contested and illegal "rent receivership" the Defendant was paid in full on mortgages & taxes.

FACTUAL BACKGROUND OF CONSTITUTIONAL LITIGATION IN CONN. OVER PROCEDURAL DUE PROCESS.

In May of 1970 plagued with unconscionable attachments made without notice or hearing arising from a fire in a building under construction this Petitioner filed his first suit in the UNITED STATES DISTRICT COURT - CONNECTICUT challenging on constitutional grounds the attachment statute as it then existed, GS 52-279.

The action was dismissed by the District Court and dismissal upheld by the Second Circuit Court of Appeals and This Court granted Certiorari. Tucker v Maher, 405 U. S. 1052.

On remand hearing was held before a Three-Judge District Court and three days after hearing before decision was rendered former Governor Meskill signed into law

the legislative by-product of this litigation, namely PA 73-431 now GS 52-278 a b c d e f g.

This present petition falls squarely within the factual and constitutional confines of the former Petition, granted in Tucker v Maher, supra, and within the confines of all of the important actions upheld by this Court in recent years upholding on constitutional grounds challenges to statutes that permit the impounding of private property without procedural due process and without minimum constitutional safeguards.

It is called to the attention of This Court that Rent Receiverships granted in large volumes under similar conditions in Connecticut State Courts today are in total violation of PA 73-431 prohibiting all prejudgment remedies (except temporary restraining orders) without prevailing on a probable cause hearing on notice.

Because of severe inflation coupled lack of ready financing Billions of Dollars

in real estate in Connecticut is being foreclosed at an increasing rate all in violation of the Constitution and the Amendments thereto.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH
U.S. SUPREME COURT DECISIONS

The primary thrust of Appellant's challenge to the constitutionality of Conn. G. S. 52-504 stems from Snaidach v Family Finance 395 US 337 (1969) and its follow on cases. The substantial federal question raised in this Petition is identical to the Snaidach federal question.

A-1 THE DECISION CONFLICTS WITH SNAIDACH

The Connecticut Supreme Court amply briefed on oral arguments as to conflicts with the Bre-judgment Remedy Act, PA 73-431,

and with leading decisions of this Court, especially Fuentes v Shevlin, supra, wherein the special conditions were clearly delineated as to when a pre-judgment remedy may be granted without the procedural due process by its decision dismissing Petitioners appeal, impliedly denied all of his constitutional argument and all of his federal questions at issue herein.

Snaidach at P 339 : "Such summary procedure may well meet the requirments of due process in extraordinary situations. C f, Fahey v Mallone 332 US 245, 253-254, Ewing v Mytinger & Casselbery, Ins. 339 US 594, 598-600; Ownby v Morgan 256 US 94, 110-112, Coffin Bros v Bennett 277 U S 29, 31. But the present case presented no situations requiring special protection to a state or to a cre-

ditor is presented by the facts;
nor is the Wisconsin statute
narrowly drawn to meet any such
unusual conditions"

The words of wisdom quoted above from Snai-
dach, supra are most pertinent to the comp
laint levied herein at Conn G. S. 52-504
which by its total lack of standards and
loosely drawn content permits bad faith or
fraudulent creditor actions in violation
of the U. S. constitution and the amendments
to seize with predatory intent Billions of
dollars in Connecticut real estate.

A-2 THE DECISION CONFLICTS WITH BODDIE

The principle expressed in Boddie v Conn.
91 S Ct 780, is that ABSENT A COMPELLING
COUNTERVAILING **STATE** INTEREST OF OVERRIDING
SIGNIFICANCE, persons must be given a mean-
ingful opportunity to be heard.

Boddie, supra at P 785: "This Court voiced
the doctrine that wherever one is
assailed in his person or his pro-
perty there he may defend."

This compelling doctrine is violated ruth-
lessly by large banks and / or lending in-
stitutions that seek to use unfair means to
deprive citizens of Connecticut of a fair
hearing solely for purposes of depreciating
real property so that large equities can be
illegally seized in violation of the Con-
stitution and the Amendments by appointment
of a hand picked "Rent Receiver" who works
to put through a "strict" foreclosure whereby
the Bank can seize the entire equity of
the Debtor without payment of a single penny.

It is difficult to describe conditions
more obnoxious to the U. S. Constitution and
the Amendments thereto. Certainly none of
the leading civil rights cases in recent de-
cades wherein this Court upheld due process
and equal protection challenges to state
statutory schemes permitting impounding of

private property without procedural due process are as repugnant as the actions complained of herein.

II. THE DECISION OF THE SUPREME COURT OF CONNECTICUT DISMISSING PETITIONERS APPEAL VIOLATES THE STATUTE G S 52-278 1 MAKING ALL PRE-JUDGMENT ORDERS APPEALABLE.

In this action the state court order made in the Superior Court of Litchfield appointing a Rent Receiver and granting a motion to Amend the Return was promptly and timely appealed to the Connecticut Supreme Court, This appeal was taken pursuant to the Pre-Judgment Remedy Act, PA 73-431 adopted May 30th, 1973 only days after this Petitioner had appeared before a Three-Judge District Court on remand from the UNITED STATES SUPREME COURT in Tucker v Maher, 405 US 1052, where this Petitioners prior challenge to similar deficiencies in Conn. attachment statutes had been upheld.

The Pre-Judgment Remedy Act was amended by the Connecticut Legislature on June 2, 1976 to specifically make orders, like the one on appeal herein, final for purposes of appeal. PA 76-401 Sec 4 (now GS 52-278 1) :

"(a) An order granting or denying a pre-judgment remedy....shall be deemed a final judgment for purposes of appeal."

note - underline added.

CONCLUSION

This Petitioner expresses gratitude for himself and for all Connecticut citizens for former granting of Certiorari in Tucker v Maher, 405 US 1052, and asks This Honorable Court once more on this identical challenge on the strength of GS 52-278 1 to grant certiorari and to summarily remand for further proceedings.

RESPECTFULLY SUBMITTED:

STANLEY V. TUCKER
PETITIONER

A-1

No 201542

PEOPLES SAVINGS BANK- BRIDGEPORT

-v-

STANLEY V. TUCKER

November 3, 1976

The Plaintiff's motion to dismiss the
appeal from the Superior Court in
Hartford County is granted.

Entered on the Docket 11-8-76

By the Court,

Horne
Chief Justice

A-2

No 201542

PEOPLES SAVINGS BANK : Superior Court

-v-

: Hartford County

STANLEY V. TUCKER : March 9th, 1976

Motion for Appointment of Receiver of Rents

The plaintiff in the above entitled
action respectfully moves this Court to
appoint a Receiver of Rents.

PLAINTIFF

By _____

No 201542

PEOPLES SAVINGS BANK : Superior Court
 -v- : Hartford County
 STANLEY V. TUCKER : November 2, 1976

In Re Findings

The motion for appointment of receiver of rents was heard on the short clendar on April 2, 1976, at which time the attorney for the plaintiff and the defendant, STANLEY V. TUCKER, were fully heard. The decision of the court was based on their statements and representations. The court's memorandum of decision, dated April 5th, 1976 was filed.

No testimony, under oath, was presented and there is no transcript of the arguments on the motion available. Consequently the court cannot make any findings.

s/

 A. J. ARMENTANO j.

No 201542

Plea in Abatement March 8th, 1976

The Defendant pleads in abatement that the court has no jurisdiction because:

1. Defective service by Sheriff in that return shows service at 963 Capitol Ave, Hartford, a 14 family building and Defendant resides and maintains his abode not at 963 Captiol Ave but in Apt B 4 thereof.

.....

 STANLEY V. TUCKER

Amendment to Plea in Abatement April 12, 1976

4. The Sheriff's return is defective and fails to conform to statute requiring showing of abode service at proper address of defendant, namely Apt B 4, 963 Capitol Ave, Hartford.

.....

 STANLEY V. TUCKER

O R D E R

The Plea in Abatement and the Amendment to Plea overruled. May 6, 1976

 RUBINOW J.

G. S. 52-504 Complained of As Unconstitutional**§ 52-504. Application for receiver; orders of judge**

When any action is brought to or pending in any court of equitable jurisdiction in which an application is made for the appointment of a receiver, any judge of such court or of the superior court, when such court is not in session, after due notice given, may make such order in the premises as the exigencies of the case may require, and may, from time to time, rescind and modify the same, and shall cause his proceedings to be certified to the court in which the action may be pending, at its next session. (1949 Rev., § 8240.)

76-1055

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

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Supreme Court, U. S.
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FEB 28 1977

MICHAEL RODAK, JR., CLERK

STANLEY V. TUCKER,

Petitioner

v.

PEOPLE'S SAVINGS BANK-BRIDGEPORT,

Respondent

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CONNECTICUT**

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1055

STANLEY V. TUCKER,

Petitioner

v.

PEOPLE'S SAVINGS BANK-BRIDGEPORT,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The respondent People's Savings Bank-Bridgeport respectfully prays that this Court deny the petition for a writ of certiorari to the Supreme Court of the State of Connecticut as sought by the petitioner Stanley V. Tucker.

I. CITATION

A decision of the Connecticut Supreme Court, *People's Savings Bank-Bridgeport v. Tucker*, Volume XXXVIII, No. 20, Conn. L.J., p. 6 (November 16, 1976) (said decision being set forth on page A-1 of Petition). Said decision is reported as *People's Savings Bank-Bridgeport v. Stanley V. Tucker*, 365 A.2d 632 (1976).

II. QUESTIONS PRESENTED

1. Did the action of the Supreme Court of the State of Connecticut constitute a final judgment from which a writ of certiorari may issue?
2. Does the petition conform to paragraph 4 of Rule 23 of the Supreme Court of the United States?
3. Did the appointment of a receiver of rents in a mortgage foreclosure action, by the trial court, constitute a denial of due process of law to the petitioner?
4. Did the appointment of a receiver of rents in a mortgage foreclosure action, by the trial court, constitute a denial of equal protection of the law to the petitioner?

III. STATEMENT OF THE CASE

This is an action to foreclose a real estate mortgage, said action being returnable to the Superior Court for Hartford County and the State of Connecticut. The petitioner, Stanley V. Tucker, owner of the property which is the subject of this foreclosure action, filed a *pro se* appearance. The respondent-mortgagee moved that the said Superior Court appoint a receiver of rents (Petition A-2) in accordance with Conn. Gen. Stat. §52-504 (Rev. 1958) (Petition A-5) in order to protect and preserve the property interests of all parties.

On April 2, 1976, counsel for the respondent and the *pro se* petitioner appeared in Superior Court for Hartford County and fully argued the merits of the then pending motion (Petition A-3). On April 5, 1976, the court issued its decision granting plaintiff's motion and appointed John S. Pinney, Esquire, to the position of receiver of rents. Attorney Pinney, in no manner connected with the respondent, its attorneys, or the *pro se* petitioner, was selected by said court as an independent and impartial receiver of rents under bond and fully accountable to said Superior Court.

On October 6, 1976, over six months after the appointment of said receiver of rents, the petitioner filed an appeal to the Supreme Court of the State of Connecticut, contesting the appointment of the receiver of rents and four other court orders relating to preliminary proceedings. A motion to dismiss said appeal was filed with the Supreme Court of the State of Connecticut on October 15, 1976 (A-1), and said motion was argued on November 3, 1976. On said November 3, 1976, the Supreme Court of the State of Connecticut dismissed the appeal of the petitioner, Stanley V. Tucker (Petition A-1).

IV. ARGUMENT

1. THE ACTION OF THE SUPREME COURT OF THE STATE OF CONNECTICUT DID NOT CONSTITUTE A FINAL JUDGMENT FROM WHICH A WRIT OF CERTIORARI MAY ISSUE.

The statute upon which jurisdiction is alleged, 28 U.S.C. §1257(3) requires that the petitioner seek review of a final judgment or decree of the Supreme Court of the State of Connecticut. Clearly, the appointment of a receiver of rents in a mortgage foreclosure action is not a final judgment or decree as required by said statute.

The Supreme Court of the State of Connecticut has decided this issue on at least two prior occasions. See: *Silver v. Kingston Realty Corp.*, 114 Conn. 349, 158 Atl. 889 (1932) and *Young v. Polish Loan & Industrial Corporation*, 126 Conn. 714, 11 A.2d 395 (1940).

In the *Silver* case, Justice Maltbie, in his concurring opinion reported only at 158 Atl. 890, states that the rights to the funds collected by a receiver of rents are not determined until final judgment. Both parties are protected by court supervision of the receiver until the ultimate outcome of the case.

The appointment of a receiver of rents in a foreclosure action is clearly not a final judgment under the standard set forth by this Court in *Market St. Ry. Co. v. Railroad Commission*, 324 U.S. 548, 65 S.Ct. 761, 89 L.Ed. 1171, *reh. den.* 324 U.S. 890, 65 S.Ct. 1020, 89 L.Ed. 1438 (1945). In that case, this Court, in stating that a judgment must be final, set down the following standard:

Final it must be in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not merely interlocutory or intermediate steps therein. It must be the final word of a final court. *Id.* 324 U.S. 551.

This Court has stated, on another occasion, that the determinative issue is whether or not the rights of the parties have been fully adjudicated. *Gospel Army v. City of Los Angeles*, 331 U.S. 543, 67 S.Ct. 1428, 91 L.Ed. 1662 (1947).

A reading of Conn. Gen. Stat. §52-504 (Rev. 1958) (Petition A-5) indicates that the court may modify or rescind said appointment. It is the contention of the respondent that the *Young* and *Silver* cases correctly state the conclusion that said orders are always subject to modification and/or rescission by the trial court. The respondent respectfully contends that the appointment of a receiver of rents in a mortgage foreclosure action is a preliminary action not subject to review and taken by a trial court for the purpose of preserving and protecting the interests of the parties before said court.

Petitioner alleges that the present order was a final order within the provisions of Conn. Gen. Stat. §52-2781 (Rev. 1958) (A-3). This statute clearly does not apply. First, respondent contends that the appointment of a receiver of rents is clearly not a prejudgment remedy as defined under Connecticut law. (See Conn. Gen. Stat. §52-278a) (A-3). In addition, the statute upon which the petitioner relies was not effective until June 2, 1976. The matter from

which the petitioner appeals was decided by the trial court on April 5, 1976. (Petition A-3).

2. THE PETITION DOES NOT CONFORM TO PARAGRAPH 4 OF RULE 23 OF THE SUPREME COURT OF THE UNITED STATES.

Paragraph 4 of Rule 23 of the Supreme Court of the United States states, "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Respondent contends that the petition before this court fails to comply with these requirements. The petition fails to set forth in a concise and clear manner the allegations of fact and law upon which the petitioner apparently relies.

3. THE APPOINTMENT OF A RECEIVER OF RENTS IN A MORTGAGE FORECLOSURE ACTION, BY THE TRIAL COURT, DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS OF LAW TO THE PETITIONER.

Petitioner contends that the appointment of a receiver of rents, under the appropriate Connecticut procedures, acts as a denial of his property without due process of law. A review of the facts reveals, however, that prior to the trial court entering its order, the petitioner, Stanley V. Tucker, had notice of said proceeding and he was fully heard on said matter in open court. (Petition A-3). Respondent respectfully contends that this procedure, under Conn. Gen. Stat. §52-504 (Rev. 1958), exceeds the minimum requirements of due process of law.

Conn. Gen. Stat. §52-504 (Rev. 1958) establishes a proceeding to protect the interests of all parties. The statute requires that, prior to taking action upon an application

for the appointment of a receiver, the court must issue due notice to the party affected by such order. In addition, the statute states that the court may modify and/or rescind such an order. In the instant case, it is clear that the petitioner had proper notice, did appear and further, vigorously oppose the motion for the appointment of a receiver of rents. (Petitioner A-3).

This Court has long recognized the appointment of receivers in foreclosure actions, wherein the trial court deemed it necessary to appoint a receiver on a temporary basis when the interests of the parties required it. *Cake v. Mohun*, 164 U.S. 311, 17 S.Ct. 100, 41 L.Ed. 447 (1896).

Respondent contends that the facts of the instant case, to the extent that they involve a prior legal interest in property on the part of the lender, are somewhat analogous to *Mitchell v. W. T. Grant Company*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974). In fact, in the present case, all the requirements of notice and hearing as set forth in *Mitchell, Id.*, were complied with, and the more stringent procedural requirements of *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) and *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) were complied with. As the court noted in the *Fuentes* case, *Id.*, procedural due process is not an impenetrable barrier to the taking of property but, rather, serves to establish a fair process for the determination of the rights of the parties. Respondent contends that the procedures employed in the instant case are not in violation of our constitutionally safeguarded rights. The basic elements of due process are notice and right to a hearing before a competent tribunal. *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). A review of the fact situation in this case clearly indicates that these elements have been met.

4. THE APPOINTMENT OF A RECEIVER OF RENTS IN A MORTGAGE FORECLOSURE ACTION, BY THE TRIAL COURT, DID NOT CONSTITUTE A DENIAL OF EQUAL PROTECTION OF THE LAW TO THE PETITIONER.

The respondent respectfully contends that the petitioner has failed to brief the argument that the appointment of a receiver of rents in this mortgage foreclosure action denies him equal protection under the law. Therefore, it is the respondent's contention that this argument has been discarded.

An equal protection argument, in this matter, must allege and prove that the statute in question, Conn. Gen. Stat. §52-504 (Rev. 1958), affects the petitioner as regards his race, alienage, religion, poverty or class. *Boddie v. Connecticut*, 401 U.S. 371, 385, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Clearly, the statute in question does not discriminate against the petitioner in this manner.

V. CONCLUSION

For the reasons set forth in this brief, the respondent respectfully requests this Honorable Court to deny the petition for a writ of certiorari to the Supreme Court of the State of Connecticut.

**Respondent, People's Savings
Bank-Bridgeport**

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Attorneys for Respondent

APPENDIX

1a

NO. 201542

PEOPLE'S SAVINGS BANK-
BRIDGEPORT : HARTFORD COUNTY
VS : SUPREME COURT
STANLEY V. TUCKER, : OCTOBER 14, 1976
ET ALS

MOTION TO DISMISS APPEAL

The Plaintiff-Appellee in the above-entitled action, PEOPLE'S SAVINGS BANK-BRIDGEPORT, respectfully moves the Honorable Supreme Court of the State of Connecticut to dismiss the appeal of the Defendant, Stanley V. Tucker, on the following grounds:

1. This is an Appeal from the overruling of the Plea in Abatement and, the overruling of a Plea in Abatement is not a final judgment which can be the basis of an appeal to this Court and, therefore, said Court lacks jurisdiction.
2. This is an Appeal from the denial of a Motion to Erase and the denial of a Motion to Erase is not a final judgment which can be the basis of an Appeal to this Court, and, therefore, said Court lacks jurisdiction.
3. This is an Appeal from the appointment of a receiver of rents and the denial of a Motion to Remove said receiver. Both of these actions taken by the lower court do not constitute final judgments which can be the basis of an Appeal to this Court and, therefore, said Court lacks jurisdiction.
4. This is an Appeal from the denial of a Motion for Contempt and said denial is not a final judgment which can be the basis of an Appeal to this Court and, therefore, said Court lacks jurisdiction.

5. This is an Appeal from the denial of a Motion for Contempt. Defendant-Appellant is not aggrieved therefrom and, therefore, this Court lacks jurisdiction.

6. This Appeal is taken solely for the purposes of delay.

PLAINTIFF, PEOPLE'S SAVINGS
BANK - BRIDGEPORT

By
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This is to certify that I have filed this Motion, with sufficient copies, with the Clerk of the Supreme Court for Hartford County, pursuant to Section 639 of the Practice Book.

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[§52-278l. (P.A. 76-401, § 4) Appeal; order deemed a final judgment; time; stay; effect of motion to discharge by defendant on his property]

(a) An order (1) granting or denying a prejudgment remedy following a hearing under section 52-278d, or (2) granting or denying a motion to dissolve or modify a prejudgment remedy under section 52-278e, or (3) granting or denying a motion to preserve an existing prejudgment remedy under section 52-278g shall be deemed a final judgment for purposes of appeal.

(b) No such appeal shall be taken except within seven days of the rendering of the order from which the appeal is to be taken.

(c) No such order shall be stayed by the taking of an appeal except upon the order of the judge who made such order, and any such stay shall be granted only if the party taking the appeal posts a bond, with surety, in a sum determined by such judge to be sufficient to indemnify the adverse party for any damages which may accrue as a result of such stay.

(d) If a motion to discharge such prejudgment remedy is brought by the defendant, the property affected by such remedy may be restored to the use of the defendant, if the defendant posts a bond with surety in an amount determined by such judge to be sufficient to indemnify the plaintiff for any damages which may accrue by the defendant's continued use of such property, until such time as such motion is decided.

(1976, P.A. 76-40, §4, eff. June 2, 1976.)

§52-278a. Definitions

The following terms, as used in sections 52-278a to 52-278g, inclusive, shall have the following meanings, unless a different meaning is clearly indicated from the context:

(a) "Commercial transaction" means a transaction which is not a consumer transaction.

(b) A "consumer transaction" means a transaction in which a natural person obligates himself to pay for goods sold or leased, services rendered or monies loaned for personal, family or household purposes.

(c) "Person" means and includes individuals, partnerships, associations and corporations.

(d) "Prejudgment remedy" means any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment but shall not include a temporary restraining order.

(e) "Property" means any present or future interest in real or personal property, goods, chattels or choses in action, whether such is vested or contingent.

(1973, P.A. 73-431, §1, eff. May 30, 1973; 1973, P.A. 73-616, §65, eff. June 1, 1973.)

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976
No 76-1055

STANLEY V. TUCKER,
Petitioner

-v-

PEOPLE'S SAVINGS BANK-BRIDGEPORT,
Respondent

APPELLANT'S REPLY BRIEF PURSUANT TO RULE 24(4)

STANLEY V. TUCKER
Petitioner
Box 35
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PEOPLES SAVINGS BANK-BRIDGEPORT

APPELLANT'S REPLY BRIEF PURSUANT TO RULE 24(4)

Appellant herein replies to misstatements of fact and inaccurate representations of law in Appellee's Brief as to finality of judgment for purposes of appeal.

I. FACTUAL MISREPRESENTATIONS

Appellee's Brief bottom Page 2 represents to this Court that the Rent Receiver, John S. Pinney was unconnected with counsel for

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Appellee, Neil Atlas, whereas both worked out of the same office, made joint inspections of the property damaged over \$100,000 in market valuation while under receivership and in the presence of Appellant. Neil Atlas represented in the Hartford Superior Court that his "close associate, John S. Pinney was a seasoned and experienced rent Receiver."

That about six months later after loss of about \$24,000 in rents, extensive damages to the property and loss of market value again in presence of Appellant John S. Pinney testified - "I have never been receiver of any commercial property"

II. MISREPRESENTATIONS AS TO THE LAW

Appellee seeks to purport to this Honorable Court that the judgment was not "final for purposes of appeal" using time worn cases from the 1940's that pre-date Lynch v Household

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Finance, 405 US 538, Tucker v Maher, 405 US 1052, and Fuentes v Shevin 407 US 67.

As a matter of fact carefully omitted from Appellee's Brief there exists a recent case where the Connecticut Supreme Court has considered the "finality for purposes of appeal" of an order on a pre-judgment remedy granting or denying the appointment of a receiver and expressly held that such an order is FINAL FOR PURPOSES OF APPEAL.

Dorado Bay International v North Haven Briarwood Corporation 167 Conn 623 1975

In Dorado Bay, supra, the Connecticut Supreme Court in a case of first impression reviewed the finality of an order denying the appointment of a receiver and held that an order granting or denying a receiver was FINAL FOR PURPOSES OF APPEAL.

at P 629: "The order made final disposition

of a judicial or quasi-judicial proceeding authorized by statute and was a final judgment for appeal"

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The clear and convincing argument in Dorado Bay, Supra, shows the decision is part of a long standing line of decisions that an order that permanently disposes of a right, such as an order appointing a rent receiver permanently interferes with the right to possess and control property, is under the pertinent Connecticut cases an appealable order.

Appellee infers that the express language of GS 52-2781 making all pre-judgment remedy orders appealable did not make such orders appealable until the effective date of June 2, 1976 of that statute. It is clear from examining the statute with the language of Dorado, Bay, supra, that the Connecticut Legislature did nothing more than to conform the written statute to the mandate of Dorado Bay, supra.

CONCLUSION

The orders appealed in this action and in companion case No 76-1063, Tucker v Hartford National Bank & Trust Co, where the same issues are raised in this court are both appealable and final and this Court should grant the Petitions for Certiorari and summarily reverse on the strength of Dorado Bay, supra.

Respectfully:

STANLEY V. TUCKER
Petitioner